

PART 1953—CHANGES TO STATE PLANS

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AUTHORITY: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 3-2000 (65 FR 50017, August 16, 2000).

SOURCE: 67 FR 60125, Sept. 25, 2002, unless otherwise noted.

§ 1953.1 Purpose and scope.

(a) This part implements the provisions of section 18 of the Occupational Safety and Health Act of 1970 (“OSH Act” or the “Act”) which provides for State plans for the development and enforcement of State occupational safety and health standards. These plans must meet the criteria in section 18(c) of the Act, and part 1902 of this chapter (for plans covering both private sector and State and local government employers) or part 1956 of this chapter (for plans covering only State and local government employers), either at the time of submission or—where the plan is developmental—within the three year period immediately following commencement of the plan's operation. Approval of a State plan is based on a finding that the State has, or will have, a program, pursuant to appropriate State law, for the adoption and enforcement of State standards that is “at least as effective” as the Federal program.

(b) When submitting plans, the States provide assurances that they will continue to meet the requirements in section 18(c) of the Act and part 1902 or part 1956 of this chapter for a program that is “at least as effective” as the Federal. Such assurances are a fundamental basis for approval of plans. (See § 1902.3 and § 1956.2 of this chapter.) From time to time after initial plan approval, States will need to make changes to their plans. This part establishes procedures for submission and review of State plan supplements documenting those changes that are nec-

essary to fulfill the State's assurances, the requirements of the Act, and part 1902 or part 1956 of this chapter.

(c) Changes to a plan may be initiated in several ways. In the case of a developmental plan, changes are required to document establishment of those necessary structural program components that were not in place at the time of plan approval. These commitments are included in a developmental schedule approved as part of the initial plan. These “developmental changes” must be completed within the three year period immediately following the commencement of operations under the plan. Another circumstance requiring subsequent changes to a State plan would be the need to keep pace with changes to the Federal program, or “Federal Program Changes.” A third situation would be when changes are required as a result of the continuing evaluation of the State program. Such changes are called “evaluation changes.” Finally, changes to a State program's safety and health requirements or procedures initiated by the State without a Federal parallel could have an impact on the effectiveness of the State program. Such changes are called “State-initiated changes.” While requirements for submission of a plan supplement to OSHA differ depending on the type of change, all supplements are processed in accordance with the procedures in § 1953.6.

§ 1953.2 Definitions.

(a) *OSHA* means the Assistant Secretary of Labor for Occupational Safety and Health, or any representative authorized to perform any of the functions discussed in this part, as set out in implementing Instructions.

(b) *State* means an authorized representative of the agency designated to administer a State plan under § 1902.3(b) of this chapter.

(c) *Plan change* means any modification made by a State to its approved occupational safety and health State plan which has an impact on the plan's effectiveness.

(d) *Plan supplement* means all documents necessary to accomplish, implement, describe and evaluate the effectiveness of a change to a State plan

which differs from the parallel Federal legislation, regulation, policy or procedure. (This would include a copy of the complete legislation, regulation, policy or procedure adopted; an identification of each of the differences; and an explanation of how each provision is at least as effective as the comparable Federal provision.)

(e) *Identical plan change* means one in which the State adopts the same program provisions and documentation as the Federal program with the only differences being those modifications necessary to reflect a State's unique structure (e.g., organizational responsibility within a State and corresponding titles or internal State numbering system). *Different plan change* means one in which the State adopts program provisions and documentation that are not identical as defined in this paragraph.

(g) *Developmental change* is a change made to a State plan which documents the completion of a program component which was not fully developed at the time of initial plan approval.

(h) *Federal program change* is a change made to a State plan when OSHA determines that an alteration in the Federal program could render a State program less effective than OSHA's if it is not similarly modified.

(i) *Evaluation change* is a change made to a State plan when evaluations of a State program show that some substantive aspect of a State plan has an adverse impact on the implementation of the State's program and needs revision.

(j) *State-initiated change* is a change made to a State plan which is undertaken at a State's option and is not necessitated by Federal requirements.

§ 1953.3 General policies and procedures.

(a) *Effectiveness of State plan changes under State law.* Federal OSHA approval of a State plan under section 18(b) of the OSH Act in effect removes the barrier of Federal preemption, and permits the State to adopt and enforce State standards and other requirements regarding occupational safety or health issues regulated by OSHA. A State with an approved plan may modify or supplement the requirements contained in its plan, and may imple-

ment such requirements under State law, without prior approval of the plan change by Federal OSHA. Changes to approved State plans are subject to subsequent OSHA review. If OSHA finds reason to reject a State plan change, and this determination is upheld after an adjudicatory proceeding, the plan change would then be excluded from the State's Federally-approved plan.

(b) *Required State plan notifications and supplements.* Whenever a State makes a change to its legislation, regulations, standards, or major changes to policies or procedures, which affect the operation of the State plan, the State shall provide written notification to OSHA. When the change differs from a corresponding Federal program component, the State shall submit a formal, written plan supplement. When the State adopts a provision which is identical to a corresponding Federal provision, written notification, but no formal plan supplement, is required. However, the State is expected to maintain the necessary underlying State document (e.g., legislation or standard) and to make it available for review upon request. All plan change supplements or required documentation must be submitted within 60 days of adoption of the change. Submission of all notifications and supplements may be in electronic format.

(c) *Plan supplement availability.* Copies of all principal documents comprising the State plan, whether approved or pending approval, shall be available for inspection and copying at the Federal and State locations specified in the subpart of Part 1952 of this chapter relating to each State plan. The underlying documentation for identical plan changes shall be maintained by the State and shall similarly be available for inspection and copying at the State locations. Annually, States shall submit updated copies of the principal documents comprising the plan, or appropriate page changes, to the extent that these documents have been revised. To the extent possible, plan documents will be maintained and submitted by the State in electronic format and also made available in such manner.